

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Isaac Forman	Team: Squad #1	CCRB Case #: 201803441	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 04/26/2018 1:30 PM	Location of Incident: West 182nd Street and Davidson Avenue	Precinct: 46	18 Mo. SOL 10/26/2019	EO SOL 10/26/2019	
Date/Time CV Reported Thu, 04/26/2018 1:57 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 04/26/2018 1:57 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Theresa Lustica	01534	956859	046 PCT
2. POM Rafael Guzman	03491	934982	046 PCT
3. POM Moises Rodriguez	08124	951164	046 PCT
4. POM Konti Markvukaj	07228	956883	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Theresa Lustica	Abuse: Police Officer Theresa Lustica stopped § 87(2)(b)	
B.POF Theresa Lustica	Abuse: Police Officer Theresa Lustica stopped § 87(2)(b)	
C.POM Moises Rodriguez	Abuse: Police Officer Moises Rodriguez stopped § 87(2)(b)	
D.POM Moises Rodriguez	Abuse: Police Officer Moises Rodriguez stopped § 87(2)(b)	
E.POM Rafael Guzman	Abuse: Police Officer Rafael Guzman stopped § 87(2)(b)	
F.POM Rafael Guzman	Abuse: Police Officer Rafael Guzman stopped § 87(2)(b)	
G.POM Konti Markvukaj	Abuse: Police Officer Konti Markvukaj stopped § 87(2)(b)	
H.POM Konti Markvukaj	Abuse: Police Officer Konti Markvukaj stopped § 87(2)(b)	
I.POF Theresa Lustica	Abuse: Police Officer Theresa Lustica questioned § 87(2)(b)	
J.POF Theresa Lustica	Abuse: Police Officer Theresa Lustica frisked § 87(2)(b)	
K.POF Theresa Lustica	Abuse: Police Officer Theresa Lustica searched § 87(2)(b)	
L.POM Moises Rodriguez	Abuse: Police Officer Moises Rodriguez frisked § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
M.POM Moises Rodriguez	Abuse: Police Officer Moises Rodriguez searched § 87(2)(b) [REDACTED]	[REDACTED]
N.POM Moises Rodriguez	Abuse: Police Officer Moises Rodriguez threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]
O.POM Moises Rodriguez	Abuse: Police Officer Moises Rodriguez threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]
P.POF Theresa Lustica	Off. Language: Police Officer Theresa Lustica made remarks to § 87(2)(b) [REDACTED] based upon ethnicity.	[REDACTED]
Q.POM Moises Rodriguez	Discourtesy: Police Officer Moises Rodriguez spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
R.POM Moises Rodriguez	Discourtesy: Police Officer Moises Rodriguez spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
S.POF Theresa Lustica	Abuse: Police Officer Theresa Lustica refused to provide her name to § 87(2)(b) [REDACTED]	[REDACTED]
T.POF Theresa Lustica	Abuse: Police Officer Theresa Lustica refused to provide her shield number to § 87(2)(b) [REDACTED]	[REDACTED]

### Case Summary

On April 26, 2018, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System.

On April 26, 2018, at approximately 1:30pm, PO Theresa Lustica, PO Moises Rodriguez, PO Rafael Guzman, and PO Konti Markvukaj, of all of the 46<sup>th</sup> Precinct, allegedly stopped § 87(2)(b) and § 87(2)(b) at the intersection of West 182<sup>nd</sup> Street and Davidson Avenue in the Bronx (**Allegations A-H-Abuse of Authority: § 87(2)(g)**). PO Lustica allegedly asked § 87(2)(b) if he had any weapons on him (**Allegation I-Abuse of Authority: § 87(2)(g)**). PO Lustica then allegedly patted down § 87(2)(b) and reached inside his pants pockets (**Allegations J and K-Abuse of Authority: § 87(2)(g)**). PO Rodriguez allegedly patted down § 87(2)(b) then reached inside his pockets (**Allegations L and M-Abuse of Authority: § 87(2)(g)**). PO Rodriguez allegedly told § 87(2)(b) and § 87(2)(b) that if they found any marijuana residue around them, they would be arrested (**Allegations N and O: Abuse of Authority: § 87(2)(g)**). PO Lustica allegedly stated to § 87(2)(b) “you know why you people get searched” (**Allegation P: Offensive Language: § 87(2)(g)**). PO Rodriguez allegedly told § 87(2)(b) and § 87(2)(b) to, “shut the fuck up” (**Allegation Q and R: Discourtesy: § 87(2)(g)**). § 87(2)(b) asked PO Lustica for her name and badge number and she allegedly told him to leave the scene and did not provide that information (**Allegations S and T: Abuse of Authority: § 87(2)(g)**).

No video footage of this incident was identified.

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Theresa Lustica stopped § 87(2)(b)**

**Allegation (B) Abuse of Authority: Police Officer Theresa Lustica stopped § 87(2)(b)**

**Allegation (C) Abuse of Authority: Police Officer Moises Rodriguez stopped § 87(2)(b)**

**Allegation (D) Abuse of Authority: Police Officer Moises Rodriguez stopped § 87(2)(b)**

**Allegation (E) Abuse of Authority: Police Officer Rafael Guzman stopped § 87(2)(b)**

**Allegation (F) Abuse of Authority: Police Officer Rafael Guzman stopped § 87(2)(b)**

**Allegation (G) Abuse of Authority: Police Officer Konti Markvukaj stopped § 87(2)(b)**

**Allegation (H) Abuse of Authority: Police Officer Konti Markvukaj stopped § 87(2)(b)**

**Allegation (I) Abuse of Authority: Police Officer Theresa Lustica questioned § 87(2)(b)**

**Allegation (J) Abuse of Authority: Police Officer Theresa Lustica frisked § 87(2)(b)**

**Allegation (K) Abuse of Authority: Police Officer Theresa Lustica searched § 87(2)(b)**

**Allegation (L) Abuse of Authority: Police Officer Moises Rodriguez frisked § 87(2)(b)**

**Allegation (M) Abuse of Authority: Police Officer Moises Rodriguez searched § 87(2)(b)**

**Allegation (N) Abuse of Authority: Police Officer Moises Rodriguez threatened to arrest § 87(2)(b)**

**Allegation (O) Abuse of Authority: Police Officer Moises Rodriguez threatened to arrest**

§ 87(2)(b)

**Allegation (P) Offensive Language: Police Officer Theresa Lustica made remarks to**

§ 87(2)(b) based upon ethnicity.

**Allegation (Q) Discourtesy: Police Officer Moises Rodriguez spoke discourteously to**

§ 87(2)(b)

**Allegation (R) Discourtesy: Police Officer Moises Rodriguez spoke discourteously to**

§ 87(2)(b)

**Allegation (S) Abuse of Authority: Police Officer Theresa Lustica refused to provide her name to**

**Allegation (T) Abuse of Authority: Police Officer Theresa Lustica refused to provide her shield number to**

Both § 87(2)(b) and § 87(2)(b) testified that they interacted with four uniformed officers. Three of which were male and one was female. § 87(2)(b) described the female as light skinned, 5'8" tall, average build, with black hair. § 87(2)(b) testified that he observed her name on her nameplate, but could only see that her name began with the letter "L." § 87(2)(b) described a second officer as male, darker skin tone than the other officers but lighter than § 87(2)(b), muscular, and bald. § 87(2)(b) read this officer's name as "Buzzman." § 87(2)(b) described the third officer as male, light skinned, 6'2" tall, heavy build, black hair. He read this officer's name to be "Rodriguez." § 87(2)(b) could only described the final officer as male and light skinned. § 87(2)(b)'s description of the officers is largely consistent with § 87(2)(b)'s. § 87(2)(b) described the officers' vehicles as marked with "46" written on them, while § 87(2)(b) described them as marked multi-row vans (Board Review 01).

The Tour 2 roll call for the 46<sup>th</sup> Precinct was reviewed and PO Lustica is the only female listed with a last name beginning with the letter "L." The incident location falls within the confines of Sector D. The officers listed as working in Sector D on the roll call are PO Guzman and PO Rodriguez. PO Rodriguez's name is crossed out and third platoon is written next to his name, however both PO Rodriguez and PO Guzman testified that PO Rodriguez did work Tour 2 on that date. The only other officer with the last name Rodriguez on the roll call is a Lieutenant. There is no officer named "Buzzman" in the NYPD (Board Review 03).

PO Lustica is listed as female, Hispanic, 5'1" tall, 140 pounds, average build, with brown hair. PO Rodriguez is listed as male, Hispanic, 5'11" tall, 260 pounds, heavy build, with black hair. PO Guzman is listed as male, Hispanic, 5'9" tall, 210 pounds, average build, bald. PO Markvukaj is listed as male, white, 5'11" tall, 190 pounds, average build, with brown hair (Board Review 04).

On January 11, 2019, § 87(2)(b) and § 87(2)(b) viewed photo arrays of the possible subject officers. Both picked one filler and no potential subject officers. After the photo arrays, both civilians acknowledged that their memory of the incident and specifically the officer's faces had faded (Board Review 05).

A NYPD AVL Vehicle Current History report indicates that vehicle number § 87(2)(b) which was assigned to PO Rodriguez and PO Guzman, and vehicle number § 87(2)(b) which was assigned to PO Lustica and PO Markvukaj were in the intersection of West 182<sup>nd</sup> Street and Davidson Avenue in the Bronx at approximately 12:30pm on April 26, 2018. The AVL lists one other vehicle as being

present at the same time. That vehicle is assigned to Lt. John Lewis and PO Brendan Murphey, both white males (Board Review 06).

Both PO Lustica and PO Markvukaj denied being on scene for this incident. PO Lustica and PO Markvukaj testified that on April 26, 2018, they were assigned to a marked SUV and working in a Street Narcotics Enforcement Unit (SNEU) in Sector C of the 46<sup>th</sup> Precinct. During the SNEU sets, they were together in the chase car. Each officer had two arrests during their sets between 11:40am and approximately 12:15pm. PO Lustica testified that, at the time of this incident, they were still conducting SNEU sets in Sector C. Both officers testified that they were only permitted to conduct SNEU sets inside of Sector C and did not take any police enforcement actions outside of that sector (Board Review 07, 08).

PO Guzman testified that at the time of this incident, he was patrolling Sector D with PO Rodriguez. He did not know specifically where they were but denied being on scene for this incident (Board Review 09).

PO Rodriguez testified that on the date of this incident, he was assigned to administrative duties inside the stationhouse. He believed that PO Guzman was with him at the stationhouse, as they were both assigned to Sector D. PO Rodriguez testified that he believed he only left the stationhouse to get lunch and he did not perform any police actions while he was out. PO Rodriguez denied responding to any jobs that day (Board Review 10).

None of the officers interviewed have memo book entries that place them in specific places at, or within an hour of, the alleged time of incident.

All four officers denied involvement in this incident. However, none have a specific recollection of where they were at the time of this incident. Further, PO Guzman and PO Rodriguez's testimony conflicts regarding whether they were patrolling or in the stationhouse. PO Lustica and PO Markvukaj were consistent that their SNEU operations were in a different sector, but the proximity of Sector C to Sector D, only a few streets away, would allow them to have been on scene during this incident. As the identifying information provided by § 87(2)(b) corresponds to three of the four officers noted and the AVL results indicate that they were in the immediate area of the incident, the investigation determined, by a preponderance of the evidence, that PO Lustica, PO Markvukaj, PO Guzman, and PO Rodriguez were the officers that § 87(2)(b) and § 87(2)(b) interacted with.

§ 87(2)(b) testified that on April 26, 2018, at approximately 1:30pm, PO Lustica, PO Guzman, PO Rodriguez, and PO Markvukaj approached § 87(2)(b) and § 87(2)(b) as they stood on the sidewalk. PO Lustica told § 87(2)(b) to put his hands in the air and informed him that he and § 87(2)(b) fit a description they had received of someone displaying a gun. PO Lustica also stated that she smelled marijuana. PO Lustica asked § 87(2)(b) if he had anything on him that she should know about such as weapons. PO Lustica then frisked § 87(2)(b) before reaching inside his rear pants pockets, removing his wallet. At the same time, § 87(2)(b) observed PO Rodriguez reach inside § 87(2)(b)'s side pants pockets. PO Lustica then began looking around the area. § 87(2)(b) asked what she was looking for and she told him that she was looking for the marijuana. While she was looking around, PO Lustica stated to § 87(2)(b) "you know why you people get searched." § 87(2)(b) asked what she meant by "you people," and she said "you know what I'm talking about." A couple of minutes later, § 87(2)(b)

§ 87(2)(b)'s step-mother, § 87(2)(b) came downstairs and asked what was going on. PO Lustica immediately said there was no problem and told § 87(2)(b) and § 87(2)(b) to have a nice day. § 87(2)(b) told § 87(2)(b) to go upstairs. § 87(2)(b) stated to PO Lustica, "What's your name and badge number?" PO Lustica told § 87(2)(b) "you need to go upstairs like your mother said." She did not provide the requested information. § 87(2)(b) denied having smoked any marijuana at that time and the area did not smell of it. He testified that he had smoked a Black and Mild cigar prior to the stop (Board Review 01).

§ 87(2)(b) testified that, while standing on the street with § 87(2)(b) officers approached them and told them to place their hands on a vehicle. PO Rodriguez told them that they had been seen smoking marijuana. PO Rodriguez then frisked and reached inside § 87(2)(b)'s pockets. Afterwards, PO Rodriguez told § 87(2)(b) and § 87(2)(b) that if they found any marijuana residue around them, they would be arrested. The officer briefly searched around the area but did not find anything. While they were looking around, § 87(2)(b) and § 87(2)(b) were telling the officers that they had not done anything. PO Rodriguez told them to "shut the fuck up." § 87(2)(b) testified that they had not smoked marijuana and that the area did not smell of such (Board Review 02).

Only an address for § 87(2)(b) was obtained. Letters were mailed to her but she never contacted the investigator.

An Event Summary Index for the date, time, and location was obtained and no relevant events were identified (Board Review 11).

The Stop, Question, and Frisk log for the 46<sup>th</sup> Precinct was provided and includes no relevant entries (Board Review 13).

A warrant audit query for § 87(2)(b) and § 87(2)(b) was conducted and produced negative results (Board Review 18).

Both PO Lustica and PO Markvukaj denied responding to any calls or stopping anyone outside of Sector C. Neither officer could recall stopping anyone on the date of this incident that was not ultimately arrested. Both officers denied responding to West 182<sup>nd</sup> Street and Davidson Avenue on the date in question. Photographs of both civilians were shown to each officer. Neither recognized § 87(2)(b) nor § 87(2)(b). Both officers denied stopping § 87(2)(b) or § 87(2)(b). PO Lustica denied questioning, frisking or searching § 87(2)(b). She also denied refusing to provide her name or shield number to § 87(2)(b). She further denied making any comments to § 87(2)(b) regarding his ethnicity. PO Markvukaj denied observing any officer do any of these things (Board Review 07, 08).

PO Guzman could not recall responding to any jobs regarding marijuana or guns. He also could not recall responding to any jobs with any female officers, nor any of the officers listed as working SNEU that day. He further did not recall responding to West 182<sup>nd</sup> Street and Davidson Avenue that day. Photographs of § 87(2)(b) and § 87(2)(b) were shown to PO Guzman and he did not recognize either. PO Guzman denied stopping § 87(2)(b) or § 87(2)(b) (Board Review 09).

PO Rodriguez denied responding to any jobs with the officers listed as working SNEU on the roll call. He also denied responding to West 182<sup>nd</sup> Street and Davidson Avenue on the date in question. Photographs of both civilians were shown to PO Rodriguez and he did not recognize either. PO Rodriguez did not recall stopping either § 87(2)(b) or § 87(2)(b). He denied frisking or searching § 87(2)(b). He denied threatening to arrest either civilian or using profanity when speaking to either civilian. He did not observe any other officer do so (Board Review 10).

§ 87(2)(g)

### Civilian and Officer CCRB Histories

- § 87(2)(b)  
§ 87(2)(b)
  - § 87(2)(b)
  - § 87(2)(b)
  - § 87(2)(b)
  - § 87(2)(b)
  - § 87(2)(b)
- § 87(2)(b) has been party to one CCRB complaint and has not been a victim in any allegations (Board Review 14).
- PO Lustica has been a member-of-service for four years and has been a subject in two CCRB complaints and eight allegations, none of which were substantiated. § 87(2)(g)
- PO Guzman has been a member-of-service for 14 years and has been a subject in six CCRB complaints and nine allegations, of which three were substantiated:
  - Case #201704509 involved substantiated allegations of chokehold, physical force, and restricted breathing against PO Guzman. The Board recommended Command Discipline B and NYPD imposed No Disciplinary Action.
  - § 87(2)(g)
- PO Rodriguez has been a member-of-service for seven years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)
- PO Markvukaj has been a member-of-service for four years and has been a subject in five CCRB complaints and 27 allegations, of which four were substantiated:
  - Case #201603962 involved substantiated allegations of strip-search, stop, and question against PO Markvukaj. The Board recommended Command Discipline B and the NYPD imposed Command Discipline A.
  - Case #201806187 involved a substantiated allegation of body cavity search against PO Markvukaj. The Board recommended Command Discipline B and the NYPD has not yet imposed discipline.

- § 87(2)(g) [Redacted]  
[Redacted]

**Mediation, Civil and Criminal Histories**

- § 87(2)(b) [Redacted] declined to mediate this complaint
- As of December 3, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 15).
- § 87(2)(b) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]
- § 87(2)(b) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

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Squad No.:         1    

Investigator:     \_\_\_\_\_

Signature	Print Title & Name	Date
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Squad Leader:   \_\_\_\_\_

Signature	Print Title & Name	Date
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Reviewer:        \_\_\_\_\_

Signature	Print Title & Name	Date
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